

IN THE UNITED STATES COURT OF APPEALS **FILED**  
FOR THE FIFTH CIRCUIT

August 6, 2008

Charles R. Fulbruge III  
Clerk

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No. 08-50037  
Conference Calendar

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UNITED STATES OF AMERICA

Plaintiff-Appellee

v.

HUGO ROLANDO TOBAR-CAMPOS, also known as Alfredo Valesco-Messina

Defendant-Appellant

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. 3:07-CR-991-ALL

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Before HIGGINBOTHAM, STEWART, and SOUTHWICK, Circuit Judges.

PER CURIAM:\*

Appealing the Judgment in a Criminal Case, Hugo Rolando Tobar-Campos raises arguments that are foreclosed by *Almendarez-Torres v. United States*, 523 U.S. 224, 235 (1998), which held that 8 U.S.C. § 1326(b)(2) is a penalty provision and not a separate criminal offense. *United States v. Pineda-Arrellano*, 492 F.3d 624, 625 (5th Cir. 2007), cert. denied, 128 S. Ct. 872 (2008).

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

The Government's motion for summary affirmance is GRANTED, and the judgment of the district court is AFFIRMED.